UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARDOW, INC., Plaintiff, vs. JOE R. TANORY, JR., Defendant.	CASE NO. 09-CV-6943 OPINION & ORDER [Resolving Doc. 29]

JAMES S. GWIN,[1/] UNITED STATES DISTRICT JUDGE:

Plaintiff Cardow, Inc. brings this action for a declaratory judgment seeking determinations of invalidity respecting Defendant Joe R. Tanory, Jr.'s two patents directed to a multi-use jewelry article and a design for a finger ring.

On October 9, 2009, Defendant Tanory, *pro se*, moved the Court to dismiss Plaintiff's complaint for lack of personal jurisdiction. [Doc. 7.] Judge Stephen Robinson reserved decision and ordered additional discovery on the issue of personal jurisdiction, to be completed by October 1, 2010. [Doc. 21 at 3.] At the end of that discovery period, Judge Robinson ordered Defendant to "renew without change, amend, or withdraw its motion to dismiss." [Doc. 21 at 3.] However, Defendant waited until January 6, 2011 to renew his motion. [Doc. 30.] In the interim, Plaintiff had moved for a default judgment. [Doc. 29.]

[1/] The Honorable James S. Gwin of the United States District Court for the Northern District of Ohio, sitting by designation.

Default procedures are a useful mechanism for ensuring the orderly administration of justice, particularly when a litigant is confronted with an obstructionist adversary, but this value must be balanced against the strong preference expressed in this Circuit for deciding disputes on the merits. *See Pecarsky v. Galaxiworld.com Ltd.*, 249 F.3d 167, 174 (2d Cir. 2001) ("It is well established that default judgments are disfavored. A clear preference exists for cases to be adjudicated on the merits.").

When the party against whom default is sought is a *pro se* litigant, an additional consideration is at play, namely, a concern about the ability of *pro se* litigants to protect their rights. Default is a harsh resolution to a case, *see BBC Enters. Ltd. v. Gold Coast Tape Distrib., Inc.*, No. 88 Civ. 7786, 1992 WL 276562, at *2 (S.D.N.Y. Sept. 29, 1992) (default judgment is an "extreme sanction"), and courts must endeavor to ensure that the underlying circumstances genuinely warrant a default, as opposed to being the consequence of a simple lack of legal knowledge on the part of a *pro se* litigant. Thus, as a general matter, "a district court should grant a default judgment sparingly . . . when the defaulting party is appearing *pro se*." *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 96 (2d Cir.1993). Such decision is rendered by the court in the exercise of its sound discretion. *S.E.C. v. McNulty*, 137 F.3d 732, 738 (2d Cir.1998).

In this case, there is no indication that the Defendant's delay was due to anything besides an inability to obtain counsel. Furthermore, the relatively short length of delay in renewing his motion to dismiss and answering the complaint, coupled with the delay or confusion caused by the case's transfer to this Court, weighs in favor of denying default.

Accordingly, this Court **DENIES** Plaintiff's motion for default judgment. As to the issue of personal jurisdiction, the Court **ORDERS** the Plaintiff to file any opposition and evidentiary materials by February 2, 2011.

IT IS SO ORDERED.

Dated: January 19, 2011

JAMES S. GWIN
UNITED STATES DISTRICT JUDGE